

SENATE NO. 259

AN ACT PROHIBITING SPYWARE

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Chapter 266 of the General Laws is hereby amended by inserting after section
2 120F, the following section:-

3 Section 120G. (a) The following words and phrases as used in this section shall have the
4 following meaning unless the context clearly requires otherwise:

5 "Context based triggering mechanism", a software based trigger or program residing on a
6 consumer's computer that displays an advertisement according to the current internet website
7 accessed by a user, or the contents or characteristics of the current internet website accessed by
8 a user.

9 "Office", the office of the attorney general.

10 "Internet", as defined in the Internet Tax Freedom Act, Pub. L. No. 105-277.

11 "Spyware", software residing on a computer that:

12 (1) monitors the computer's usage;

13 (2) sends information about the computer's usage to a remote computer or server or displays or
14 causes to be displayed an advertisement in response to the computer's usage if the advertisement
15 does not clearly identify the full legal name of the entity responsible for delivering the
16 advertisement, uses a federally registered trademark as a trigger for the display of the
17 advertisement by a person other than the trademark owner, an authorized agent or licensee of
18 the trademark owner or a recognized internet search engine, uses a triggering mechanism to
19 display the advertisement according to the internet websites accessed by a user or uses a context
20 based triggering mechanism to display the advertisement that partially or wholly covers or
21 obscures paid advertising or other content on an internet website in a way that interferes with a
22 user's ability to view the internet website.

23 (3) and does not obtain the consent of the user, at the time of or after installation of the software
24 but before the software is activated, to a license agreement written in plain language containing
25 a notice of the collection of each specific type of information to be transmitted as a result of the
26 software installation, a clear and representative full-size example of each type of advertisement
27 that may be delivered, a statement of the frequency with which each type of advertisement may
28 be delivered and for each type of advertisement delivered by the software a clear description of
29 a method by which a user may distinguish the advertisement by its appearance from an
30 advertisement generated by other software services and provide a method by which a user may
31 quickly and easily disable and remove the software from the user's computer that does not have
32 other effects on the non-affiliated parts of the user's computer and that uses obvious, standard,
33 usual, and ordinary methods for removal of computer software. Spyware shall not include
34 software designed and installed solely to diagnose or resolve technical difficulties, software or
35 data that solely report to an internet website information previously stored by the internet

36 website on the user's computer, including, but not limited to, cookies, HTML code, Java scripts
37 or an operating system.

38 "Usage", the internet websites accessed by a user, the contents or characteristics of the internet
39 websites accessed by a user, a user's personal information, including, a first and last name of a
40 user, whether given at birth or adoption, assumed or legally changed and any of the following
41 with respect to a user's home or other physical address: the street name, the name of the city or
42 town or the zip code, an electronic mail address, a telephone number, a social security number,
43 any personal identification number, a credit card number, any access code associated with a
44 credit card, a date of birth, birth certificate number, a place of birth, a password or access code
45 or a user's submission to forms or internet websites.

46 "User", a computer owner or a person who accesses an internet website.

47 (b) A person may not install spyware on another person's computer, cause spyware to be
48 installed on another person's computer; or use a context based triggering mechanism to display
49 an advertisement that partially or wholly covers or obscures paid advertising or other content on
50 an internet website in a way that interferes with a user's ability to view the internet website. It
51 shall not be a defense to a violation of this section that a user may remove or hide an
52 advertisement.

53 (c)(1) An action for a violation of this chapter may be brought against a person who violates this
54 chapter; or causes a violation of this chapter, and by any of the following who are adversely
55 affected by a violation of this chapter, including, but not limited to: an internet website owner or
56 registrant, a trademark or copyright owner, an authorized advertiser on an internet website,

57 provided, however, that in an action under this section a person may obtain an injunction
58 prohibiting the committing any further violation of this section and recover the greater of actual
59 damages or \$10,000 for each separate violation; provided, further, that a court may increase the
60 damages up to 3 times the damages allowed if the court finds the defendant willfully or
61 knowingly violated this section and may award costs and reasonable attorney fees to a
62 prevailing party; and, provided further, that for purposes of this section, a separate violation
63 occurs for each individual occurrence that results in the display of an advertisement described in
64 the definition of spyware.

65 (2) A person may not bring an action for a violation of this chapter against an internet service
66 provider for the routine transmission of security information or information that contains an
67 advertisement violating this chapter and a person may not bring a class action under this section.

68 (d) The office shall establish procedures by which a person may report a violation of this
69 chapter to the office, including, but not limited to an internet website, a toll-free telephone
70 number and shall submit annually to the general court a report detailing reported violations.